

Message Text

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43

ACTION IO-14

INFO OCT-01 EUR-25 ISO-00 L-03 SS-20 NSC-07 CIAE-00 INR-10

NSAE-00 RSC-01 JUSE-00 CPR-02 DRC-01 /084 W

----- 059183

R 121827Z APR 74

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 3504

INFO AMEMBASSY MOSCOW

AMCONSUL LENINGRAD

UNCLAS USUN 1257

DEPT PASS JUSTICE FOR FRANK NILAND

E.O. 11652: N/A

TAGS: PFOR, US, UR, ASEC

SUBJECT: FISCH CASE (STONE THROWING INCIDENT AT SMUN)

REF: USUN 1146

1. USUN RECEIVED FOLLOWING NOTE FROM SMUN DATED APRIL 9
IN RESPONSE TO USUN NOTE CONTAINED REFTEL: (INFORMAL
TRANSLATION)

A. "THE PERMANENT MISSION OF THE UNION OF SOVIET
SOCIALIST REPUBLICS TO THE UNITED NATIONS PRESENTS ITS
COMPLIMENTS TO THE UNITED STATES MISSION TO THE UNITED
NATIONS AND, REFERRING TO ITS NOTE OF APRIL 5, 1974,
DRAWS ATTENTION TO THE FOLLOWING.

B. "AS IS WELL KNOWN, A SPECIAL NOTE, NO. 12, WAS SENT
JANUARY 8, 1974, BY THE USSR MISSION WITH A STATEMENT
OF ALL THE CIRCUMSTANCES OF THE CASE. IN ADDITION,
USSR MISSION FIRST SECRETARY F. N. STROK GAVE A
DEPOSITION AT THE POLICE STATION AS WELL AS TO THE
ASSISTANT US ATTORNEY D. CUTNER. IN THIS CONNECTION,
THE USSR MISSION BELIEVES THAT THERE IS ALL THE
NECESSARY BASIS FOR THE INSTITUTION OF COURT PROCEEDINGS."

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2. USUN IS SENDING TEXT OF FOLLOWING NOTE WHICH WE HAVE CLEARED WITH ASSISTANT US ATTORNEY CUTNER:

A. "THE UNITED STATES MISSION TO THE UNITED NATIONS PRESENTS ITS COMPLIMENTS TO THE PERMANENT MISSION OF THE UNION OF SOVIET SOCIALIST REPUBLICS AND HAS THE HONOR TO REFER TO ITS NOTE NO. 169 OF APRIL 9, 1974, CONCERNING THE FISCH CASE. IN ITS NOTE THE SOVIET MISSION EXPRESSES THE BELIEF THAT THE DEPOSITIONS GIVEN BY MR. STROK, THE FIRST SECRETARY OF THE SOVIET MISSION, TO THE POLICE AND THE ASSISTANT U.S. ATTORNEY ARE SUFFICIENT TO INSTITUTE COURT PROCEEDINGS.

B. "THE UNITED STATES MISSION BELIEVES IT IMPERATIVE, IN ORDER TO AVOID ANY POSSIBLE MISUNDERSTANDING, TO REITERATE IN THIS CONNECTION THE CONSIDERED VIEWS OF THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK. THE ASSISTANT UNITED STATES ATTORNEY, SPEAKING IN THE NAME OF HIS OFFICE, IS CONVINCED THAT UNLESS THERE IS TESTIMONY BY MR. STROK AS COMPLAINANT AND AS THE ONLY EYE-WITNESS TO THE INCIDENT, AND APPROPRIATE COOPERATION BY THE SOVIET MISSION IN THE CONDUCT OF THE CRIMINAL PROCEEDINGS AGAINST MR. FISCH, PROSECUTION OF MR. FISCH CANNOT EFFECTIVELY BE PURSUED. THE PART PLAYED BY THE EYEWITNESS IN A CRIMINAL COURT PROCEEDING INCLUDING GRAND JURY TESTIMONY, TRIAL PREPARATION AND TRIAL TESTIMONY, IS EXTREMELY IMPORTANT PRECISELY BECAUSE THE UNITED STATES CONSTITUTION GUARANTEES AN ACCUSED PERSON THE RIGHT TO BE CONFRONTED BY HIS ACCUSER.

C. "IN LIGHT OF THE ABOVE CIRCUMSTANCES, THE UNITED STATES MISSION EARNESTLY REQUESTS THE SOVIET MISSION TO GIVE FURTHER CONSIDERATION TO ITS POSITION INSOFAR AS THE FISCH CASE IS CONCERNED."

3. MISSION SUGGESTS THAT SIMILAR DEMARCHE BE MADE IN WASHINGTON WITH SOVIET EMBASSY.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DIPLOMATIC PERSONNEL HARASSMENT, POLICE PROTECTION RIGHTS, COURTS, DIPLOMATIC NOTES, FOREIGN POLICY POSITION, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 APR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974USUNN01257
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: UPGRADED PER MEMO P840060-0710
Executive Order: R1 19880104 BURKE, JOHN R
Errors: N/A
Film Number: P840060-0731, D740085-0698
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740444/aaaabnnk.tel
Line Count: 99
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION IO
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: UNCLASSIFIED
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: UNCLASSIFIED; CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 74 USUN NEW YORK 1146, USUN 1146
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 05 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 JUN 2002 by boyleja>; APPROVED <26 MAR 2003 by GolinoFR>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FISCH CASE (STONE THROWING INCIDENT AT SMUN)
TAGS: PFOR, ASEC, US, UR, JEWISH DEFENSE LEAGUE
To: STATE MOSCOW LENINGRAD
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005